

## II. REMARKS

The final Office Action dated June 25, 2008, has been received and carefully noted. The amendments made herein and the following remarks are submitted as a full and complete response thereto.

Claims 1-4 and 6-26 are pending, and claims 2 and 11-23 are withdrawn.

By this Amendment, claim 1 is amended. Applicants submit that support for the amendment can be found in the specification and claims as originally filed. For example, claim 1 has been amended to remove subject matter. Applicants submit that no new matter has been added and respectfully request reconsideration and withdrawal of the pending rejections.

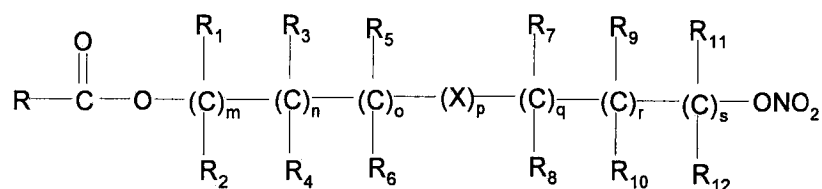
Entry of this Amendment is proper under 37 C.F.R. § 1.116 since this Amendment: (a) places the application in condition for allowance for reasons discussed herein; (b) does not raise any new issues regarding further search and/or consideration since the Amendment amplifies issues previously discussed throughout prosecution; (c) does not present any additional claims without canceling a corresponding number of finally-rejected claims, and (d) places the application in better form for appeal, should an appeal be necessary. Entry of this Amendment is thus respectfully requested.

Claims 1, 3-4, 6-10, and 24-26 were rejected under 35 U.S.C. §103(a) as being unpatentable over Del Soldato '426 (U.S. Patent No. 5,861,426) or Del Soldato '258 (U.S. Patent No. 7,199,258). Applicants traverse the rejection.

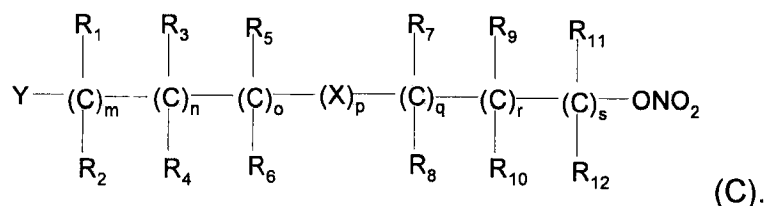
Applicants submit that Del Soldato '258 is not prior art to the presently claimed invention. Applicants submit that Del Soldato '258 claims priority from a PCT application, which was filed on August 6, 2003. The present application claims priority

from a PCT application (PCT/EP2003/008700), which was also filed on August 6, 2003, and claims priority to a foreign application (MI2002A001861), which was filed on August 29, 2002. Applicants respectfully request the withdrawal of the rejection over Del Soldato '258.

Claim 1 of the presently claimed invention is directed to a "process for preparing a compound of general formula (A)

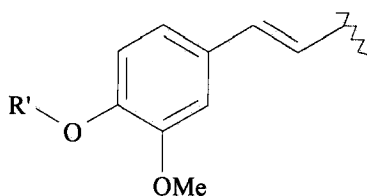


said process comprising reacting a compound of formula (B) [R-COOZ], with a compound of formula (C)," which is:



Claims 3 and 10 depend from independent claim 1. Applicants note that claim 1 was previously amended to remove "Br, Cl, [and] I" as a possible definition of Y.

Claim 4 of the presently claimed invention is also directed to a process for preparing a compound of general formula (A), wherein said process comprises reacting a compound of formula (B) [R-COOZ], with a compound of formula (C). In claim 4, R in Formula (A) is defined as the ferulic acid radical of formula (XXXII):



(XXXII)

Claims 6-9 and 24-26 depend from independent claim 4.

Applicants submit that in contrast to present claims 1, 3, and 10, Del Soldato '426 discloses "the reaction of the sodium or potassium salts of the acids with the nitric esters of halogen alcohols of the general formula:  $\text{NO}_2\text{-O-Y-Cl (Br, I)}$ " (Del Soldato '426, col. 16, lines 3-8) (emphasis added). In particular, the Examiner notes the following reaction route in Del Soldato '426:



wherein,  $\text{R-CO-ONa}$  corresponds to Formula (B) and  $\text{Br-Y-ONO}_2$  corresponds to Formula (C) of claim 1 of the presently claimed invention. Corresponding to Formula (C) of the presently claimed invention, Del Soldato '426 discloses that Y is Br. Applicants submit that in present claim 1, Y can be a number of definitions, but Cl, Br, and I are not possible definitions for Y. Therefore, Applicants submit that neither the compound of Formula (B) nor the compound of Formula (C) are taught or suggested by the presently claimed invention. Applicants submit that there is no teaching or suggestion in Del Soldato '426 to arrive at the definition of Y of presently amended claim 1, which is  $\text{R}_\text{A}\text{SO}_3^-$ , wherein " $\text{R}_\text{A}$  is a straight or branched  $\text{C}_1\text{-C}_6$  alkyl, optionally substituted with one or more halogen atoms, or a  $\text{C}_1\text{-C}_6$  alkylaryl."

Applicants note that Del Soldato '426 does not provide any examples or data regarding compounds obtained by the reaction route discussed above.

Applicants submit that without the benefit of hindsight, one of ordinary skill in the art would not be motivated to modify the process of Del Soldato '426, to arrive at the presently claimed invention.

Regarding claims 4, 6-9 and 24-26, Applicants submit that Del Soldato '426 does not teach or suggest the R group of Formula (A), which is "the ferulic acid radical of formula (XXXII)" (see above). Applicants submit that based on the teachings of Del Soldato '426, one of ordinary skill in the art would not be motivated to modify the corresponding R groups in Del Soldato '426 to arrive at the R group of claim 4.

Further, Applicants submit that without the benefit of hindsight, one of ordinary skill in the art would not know about the unexpected benefits of the presently claimed invention. For example, the specification notes the benefits of a process using the compound of formula (B) in which R is a ferulic acid radical of formula (XXXII):

"It has been surprisingly found that when in the compound of formula (B)[,] R is the radical of formula (XXXII) wherein R' is H (ferulic acid) the reaction is highly selective towards the formation of the ester of formula (A), in spite of the fact that the presence of two nucleophilic groups in the ferulic acid... could give a substantial formation of the nitroxyalkylether."

(specification, page 12, lines 18-25). Further, for example, the comparative Examples show that reactions with 4-nitrooxybutyl 4-p-toluensulfonate show higher yields and higher purity of the final product than the reactions with 4nitrooxybutyl bromide.

For at least the above reasons, Applicants submit that Del Soldato '426 does not teach or suggest the presently claimed invention. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1, 3-4, 6-10, and 24-26 under 35 U.S.C. § 103(a) over Del Soldato '426.

III. **CONCLUSION**

Applicants respectfully submit that this application is in condition for allowance and such action is earnestly solicited. If the Examiner believes that anything further is desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below to schedule a personal or telephone interview to discuss any remaining issues.

In the event this response is not timely filed, the Applicants hereby petition for an appropriate extension of time. The fee for this extension, along with any other additional fees which may be required with respect to this response, may be charged to Deposit Account No. **01-2300**, referencing Attorney Docket No. **026220-00061**.

Respectfully submitted,



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